# MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION OPEN MEETING MINUTES November 22, 2016

## **Trustees Present:**

Bernard L. Jones, Sr., Chair Michael Calkins. Vice Chair

William Allen

Susanne Brogan, representing Treasurer Nancy Kopp (via Web-Conference)

James Wallace, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture

Jerome Klasmeier, representing Comptroller Peter Franchot

Tom Mason

**Donald Moore** 

Dan Rosen, representing Secretary Wendi Peters, Maryland Department of Planning

Milly Welsh

## **Trustees Absent:**

Catherine Cosgrove Ralph Robertson

#### Others Present:

Michelle Cable, MALPF Administrator
Diane Chasse, MALPF Administrator
Nancy Russell-Forrester, Assistant Attorney General, Department of General Services
William Gorski, Anne Arundel County, Planner
Justin Hayes, Assistant Attorney General, Department of Agriculture
Kim Hoxter, MALPF Monitoring, Enforcement and Database Coordinator
Dr. Lori Lynch, Prince George's County Researcher
Carol West, MALPF Executive Director
Amanda Wilson, Fiscal Specialist

# Others Present By Web Conferencing:

William Amoss, Harford County Program Administrator Debbie Herr-Cornwell, Caroline County Program Administrator Kaylee Justice, Baltimore County Staff Clay Martz, Attorney for Wiles Family, Frederick County Dona Landis-Smith, Queen Anne's County Program Administrator

Bernard L. Jones, Sr., Chair, called the meeting to order at 9:00 a.m. at the Maryland Department of Agriculture building, Annapolis, Maryland. The guests and then the Board and staff introduced themselves.

## I. APPROVAL OF MINUTES

A. Approval of Open Minutes from October 25, 2016.

Motion #1:

To approve minutes from October 25, 2016 with changes.

Motion:

Susanne Brogan

Status: Approved

Second: Michael Calkins

## II. ADDITION / DELETION OF AGENDA ITEMS

Addition of Item VI.B - Request to Disclaim a Beguest - Beverly Seeley Estate

## III. ANNOUNCEMENTS

Ms. West informed the Board a new member, Joe Wood of St. Mary's County, has been appointed to the Board. Mr. Wood's appointment completes the Board's roster.

Mr. James Wallace is retiring effective November 30. Mr. James Eichhorst will become Ms. West's supervisor effective December 1, 2016 and will remain as Secretary Joe Bartenfelder's designee to serve on the Board.

## IV. EASEMENT AMENDMENTS

#### A. BALTIMORE COUNTY

1. 03-82-03A2e Linden Springs Farm, LLC (Judd Thomas)

~111.5 acres

## Request -Baltimore County:

Request to relocate a pre-existing dwelling as a non-subdividable building envelope.

### Recommendation:

Staff recommends approval in accordance with COMAR 15.15.04, subject to the following conditions: 1) the new dwelling being non-subdividable from the easement property, and 2) execution of a written agreement memorializing the relocation approval and conditions.

Ms. Cable introduced the item. Ms. Justice was available via the Go-To-Meeting option for any questions or clarifications.

Motion #2:

To approve the request to relocate a pre-existing dwelling as a Non-subdividable building envelope.

Motion:

Michael Calkins

Second: James Wallace

Status:

Approvéd

## **B. CAROLINE COUNTY**

1) 05-80-02 Walsh, James "JOK" and Quentin ~261.5 acres State Highway Administration (SHA) road improvement project – condemnation of a portion of easement property

#### MD 404 Road Widening Project (Caroline County):

Staff presented an outline of the road widening project for informational purposes only, as it affects the Walsh easement property. SHA is making road improvements on MD 404, a part of the project occurring in Caroline County. The portion of the project affecting the easement property consists of a combination of non-contiguous fee-simple strips of land and non-contiguous areas for temporary construction easements over MALPF easement property.

Ms. Turner introduced the item for information only. Ms. Herr-Cornwell was available for questions or comments.

# C. FREDERICK COUNTY

1) 10-82-12 Wiles, Kenneth, Jr. and Keith, Sr.

~239 acres

## Request -- Frederick County:

Request approval for a tenant house for Keith Wiles, Jr.

## Recommendation

Staff recommends approval of a tenant house for Keith Wiles, Jr.

Ms. Chasse introduced the item. Mr. Martz, representing the Wiles family, was available for questions or comments.

Motion #3:

To approve the request for a tenant house for the use of Keith

Wiles, Jr.

Motion:

Michael Calkins

Second: Milly Welsh

Status:

Approved

2) 10-82-12 Wiles, Kenneth, Jr. and Keith, Sr.

~239 acres

## Request - Frederick County:

Request for approval to relocate a pre-existing dwelling out to the road. If the previous tenant house request is approved, then the dwelling that Keith Wiles, Jr, lives in becomes a tenant house and it's "pre-existing dwelling status" is relocated to the tenant dwelling along the road, which Keith Wiles, Sr. currently lives in.

## Recommendation:

If the tenant house request is approved, then the pre-existing dwelling right can be relocated out to the road with Foundation approval per COMAR 15.15.03.05.

Ms. Chasse introduced the item. Mr. Martz was available for any guestions or comments. There was discussion about whether the Amendment should remove the right to request termination. The landowners, as represented by their attorney, were not in favor of it.

Motion #4:

To approve the request to relocate a pre-existing dwelling. This

approval does not include removal of the right to request

termination.

Motion:

Michael Calkins

Second: Jerry Klasmeier

Opposed:

Tom Mason, Don Moore, Milly Welsh

Abstained:

Susanne Brogan

Status:

Approved

#### D. HARFORD COUNTY

1) 12-80-01

Island Branch Farm, LLC (Michael Birch)

~143 acres

## Request - Harford County:

Request for approval to rescind previously-approved 9.3 acre agricultural subdivision.

## Recommendation:

Staff recommends approval.

Ms. Chasse introduced the item. Mr. Amoss was available for questions or comments. There was no discussion.

Motion #5:

To approve the request to rescind a previously-approved 9.3

acre agricultural subdivision.

Motion:

Don Moore

Second: Milly Welsh

Status:

Approved

# E. WORCESTER COUNTY

1) 23-01-02

Moore, John and Lynda

~185.179 acres

Request - Worcester County:

Request for approval to release one acre around a pre-existing dwelling that will be non-subdividable from the easement. (This can be documented by an Amended Deed of Easement that permits a building envelope.)

## Recommendation:

Staff recommends approval.

Ms. Chasse introduced the item. The Board discussed whether it should permit the release of the one acre, but determined that it was the right of the landowners.

Motion #6:

To approve the request for release of one acre around a preexisting dwelling. Approval to be documented by an Amended

Deed of Easement that permits a building envelope.

Motion:

Bill Allen

Second: Milly Welsh

Status:

Approved

# V. EASEMENT PETITIONS

N/A

#### VI. PROGRAM POLICY

## A. Baltimore County Ranking Formula Update

Ms. Cable presented the item. Ms. Justice was available via the Go-To-Meeting option f or any questions or clarifications

Motion #7:

To approve Baltimore County's request to update their ranking system. Changes to the ranking system are to apply to the FY

2017 easement acquisition cycle applicants.

Motion:

Milly Welsh

Second: Jerry Klasmeier

Status:

Approved

## B. Request to Disclaim a Bequest - Beverly Seeley Estate

Ms. Beverly B. Seeley passed away on June 11, 2014. In her Living Trust, she directed that upon her death, a 1/3 share of any remaining assets in the Trust, be distributed to each of 1) the P.H. Beavers and Grace Burgee Beavers Memorial Scholarship Endowment with the University of Maryland College Park Foundation, Inc., 2) Hospice of Prince George's County (now merged with The Hospices of the National Capital Region, located in Virginia) and 3) the Maryland Agricultural Land Preservation Foundation. It appears that Ms. Seeley, or her attorney, believed that the Foundation is a charity like the other two beneficiaries.

Staff originally thought that only cash from Ms. Seeley's estate was to be distributed. Upon discovering that small lots of real property located in Virginia constituted part of the bequest, staff, with legal advice, requested that the properties be sold and that any cash from the sale be distributed among the three beneficiaries. This avenue was pursued since the Foundation does not have the resources to maintain property in Virginia. The three beneficiaries agreed to this course of action and on August 24, 2016 William Haugh, First Vice President with SunTrust Bank the Trustee of the Beverly B. Seeley Living Trust, received our written approval to list and sell the lots 'by any means necessary'.

The Trustee attempted to sell these two camping site lots to adjacent landowners for \$20 each. One of the adjacent landowners, The Four Winds Club, has agreed to accept the two camping site lots for no consideration.

Under Agriculture Article 2-504 (4) the legislature granted to the Foundation the specific authority to accept bequests of fee interests in real property to carry out the legislative intent of preserving prime agricultural land and woodland. Counsel's advice is that because the Foundation has the power to accept bequests of real property, it also has the power to disclaim such interests. In the current situation, the Foundation does not have the resources to maintain the lots, nor does it have appropriation to pay taxes on the lots. In addition, the lots lie outside of Maryland, and are not to be preserved for agricultural use.

Staff proposes that the Board disclaim the bequest of all real property interests in the above three lots from the Seeley Living Trust if the Trustee is unable to obtain an offer for purchase by November 30, 2017.

Motion #8:

To approve the request to disclaim a bequest from the Beverly

Seeley Estate.

Motion: Status: Milly Welsh

Approved

Second: Michael Calkins

# INFORMATION AND DISCUSSION

VII.

A. Uses Policy – Revised Policy for Review

Mr. Calkins and Ms. Cable presented the item and were available for questions or clarifications. Ms. Cable informed the Board that she received some clarifying edits, plus recommended changes, from Ms. Forrester and Mr. Hayes to the draft that was provided in the agenda (version 4).

The changes they recommended are to include a definition of "Agriculture" at the beginning of the policy. The term is defined in the current MALPF easement form, which will be used for this policy as well. The attorneys also asked the Board to consider the "some/majority" percentage qualification applied to the different uses. Possibly consider establish a minimum percentage necessary to be eligible to apply for certain uses. The attorneys also recommended to include the two COMAR references as part of the policy.

Finally, the attorneys recommended changes to the Events section. The two categories for agrelated uses are currently minor and major, which implies a size element to the event that isn't necessarily the case. Instead, they suggest renaming them as Tier 1 and Tier 2 categories. For the non-ag related events, suggest to require all events to be approved by the Board so that there is no staff level approval. While the Board has approved some non-ag related events in the past (such as weddings), there is no statutory authority to approve non-agricultural activities. The Board has been able to allow minimal events in the past because they have determined the events/activities have a de minimis impact to the agricultural operation as a whole. Additionally, they recommended the Board to consider settling a maximum number of non-ag related events that can occur within a year. The Board agreed that non-ag related events should require Board review and they will consider settling a maximum number permitted annually.

Ms. Welsh added a suggestion to clarify the farm animal veterinary hospital category, including the "majority" qualifier for the type of animals that are permitted to be treated.

Ms. Cable informed the Board that the next steps in the review process for the Uses Policy will be to apply the revisions discussed in the meeting today. Then the revised policy, with the referenced COMAR regulations, will be sent to the Board as well as the County Program Administrators for their review, including the review of the local ag advisory boards. The revised draft policy will be presented at the January 2017 Board meeting, with a compilation of the comments received. The Board will review the policy at that time, and determine if it is in a condition that can be voted on for approval or not. If not, the policy will continue to be revised

and brought back before the Board until it is found acceptable and officially approved in a final state.

B. News Articles

#### VIII. CLOSED SESSION

Bernard L. Jones Sr. asked for a motion for adjournment of the meeting to move into a closed session, pursuant to the applicable provisions of General Provisions Article Section 3-305 (b): (7) to consult with counsel to obtain legal advice; and (8) to consult with staff, consultants, or other individuals about pending or potential litigation.

Motion #9:

To adjourn the regular session to move into a closed session to consult with counsel to obtain legal advice; and to consult with staff, consultants, or other individuals about pending or potential litigation.

Motion:

Don Moore

Second: Michael Calkins

Status:

Approved

The Open Board Meeting was adjourned at approximately 10:50 a.m.

The Closed Meeting of the Board was held from 11:05 a.m. to 11:15 a.m. on November 22, 2016 at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of the General Provisions Article Section 3-305 (b): Annotated Code of Maryland:

General Provisions Article Section 3-305(b):

- (7) to consult with counsel to obtain legal advice; and
- (8) to consult with staff, consultants, or other individuals about pending or potential litigation.

During the Closed Meeting, the following Board members were present: Bernard L. Jones, Sr., Chair, Michael Calkins, Vice-Chair, William Allen, Susanne Brogan, representing Treasurer Nancy Kopp (via Web-Conferencing), James Wallace, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture, Jerome Klasmeier, representing Comptroller Peter Franchot, Tom Mason, Donald Moore, Dan Rosen, representing Secretary Wendi Peters, Maryland Department of Planning, and Milly Welsh.

The following legal representatives were also present during the closed session meeting: Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture and Nancy Russell-Forrester Assistant Attorney General, Maryland Department of General Services.

## TOPICS DISCUSSED:

- A. Approval of October 25, 2016 Closed Session Minutes
- B. Status Report of Pending Legal Issues
- C. Item withdrawn
- D. 12-86-06 Bonita Farm Request to record plat and Corrective Easements

Respectfully Submitted:

Carol S. West, MALPF Executive Director